App. F. IX-4

1927-28
Law

File No. 72-27

Serial Nos. 5-7

Previous References
Law 72-27, 1-4.

Later References
Law 223-35(1-3)
" 223-35-4
" 23-38-1-4

General and Revenue Secretariat.

Serial Nos. Nil

Part B for July 1929

SUBJECT

Judgment in O.S. 2/m-25. Civil Court Thiruvalla (Habib Ahmed Musa East-Vs Syed Kasim)

By Govt
25/7/29

General and Revenue Secretariat

Law File No. 72

App. F. II of 1927

N. SESHA SASTRI, Esq., B.A., B.L.,
PUBLIC PROSECUTOR, SHIMOGA DIVISION.

5342/28
SHIMOGA.

Date 18th May, 1929.

No. 281.

To,

W 2/5 Law 72-27-5

The Secretary to Government,

Law Department, Bangalore.

Sir

Re O.S. 2/24-25, District Court, Shimoga. (Habib Ahmed Musa Sait Vs Government of Mysore and another.)

I have the honor to state that judgment was pronounced ~~xt~~ in the abbve case on 13-5-1929 and the suit is dismissed with costs of the 1st. defendant. I shall apply for a copy of the judgment and the same will be sent on to you as soon as ready

I have the honor to be.
Sir,
Your most obedient servant
N. Sesha Sastri
Public Prosecutor, Shimoga Division.

Law 21/5

The facts of the case are mentioned in PP's report (Page 1) Copy of the Judgt may perhaps be awaited - In the meanwhile this may be sent to the G. M. Branch for perusal and return

For information

Draft 22/5/29 W 22/5 (for M. Br.) W 22/5

(1st Member) dcg 23/5/29

Received Copy for information

24.5.29

RG 25/5/29

Draft put up dcg 25/5/29

W 27/5 Draft 27/5 Yellow W 27/5. dcg 27/5/29

OF THE ... COUNCIL
31 MAY 1929
No 4261

Note—Contn. Sheet

WD 01684—GPB—30,000—20-4-29

General and Revenue Secretariat — Land File No. 7 2 — of 192 7

Serial No.	
	P 7 / 27 dated 29.8.29 to Ch. of Conservator forwarding Copy of ~~app~~ his letter
Sno B to issue Copy of Govt. Dny 3.9.29	Letter No 2 dated 1.9.29 forwarding Copy of ~~Govt~~ decree Submitted for perusal before being filed. Dny 16.9.29 17/7 L.R.)

B Dny

WD 01684—GPB—30,000—20-4-29

67
P 1929

Shimoga.
1st. July, 1929.

No. 2.

Enclo 2.

Law 7 2-29-7

From

N.Sesha Sastri Esq., B.A., B.L.,

Public Prosecutor, Shimoga Division.

To

The Secretary to Government,

Law Department, Bangalore.

Sir,

With reference to your letter No. P.7768/Law 4-28 dated nil, I have the honor to forward herewith copies of judgment and decree in O.S. 2/24-25 on the file of the District Judge, Shimoga (Habib Ahmed Musa Sait Vs Government of Mysore and another) aspromised in my letter No. 281 dated 18th. May, 1929.

I have the honor to be
Sir,
Your most obedient servant,

N Sesha Sastri

Public Prosecutor, Shimoga Division.

TWO ANNAS

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MYSORE

In the Court of the District judge

Shimoga.

Original Suit number 2 of 1924-1925.

Dated the 13th day of May 1929.

Present:- B. R. Krishnamachar Esqre BA. BL.

District judge

Plaintiff:- Habib Ahamed Moosa Seit,

by attorney Alli Mahamed

Defendants:- (1) The Government of

Mysore. (2) B. Syed Ajamuddin Mowli

Preamble.

The Suit is for the recovery of

Rupees 1655/- being the value of 4267

Cubicfeet of undelivered timber with

interest and damages from the 1st

Defendant.-

The Suit was filed on 28-8-1924

and the written Statement of Defendants

1 and

TWO ANNAS
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GOVT OF MYSORE

1 and 2 D/ Defts

1 and 2 were filed on 19-5-1925 and 3-11-1924 respectively. The 1st Plaintiff's reply was filed on 15-6-1925.

3. The Suit came on for Settlement of issues on 17-6-1925.

4. The following issues were framed:-

*This issue was modified in 14-6-1927.

(1) Was there unusual delay on the part of the Forest Department in delivering the timber purchased by the 2nd Defendant?

2) Is the 1st Defendant responsible for the temporary enjunction issued by the Munsiff's Court at the instance of Haladanna.

(3) Is the 1st Defendant liable to bear any loss sustained by the 2nd deft?

(2e) To what relief, if any, is Plaintiff entitled?

The

TWO ANNAS
GOVT OF MYSORE
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The issue was modified on 14-6-1927 as follows:-

3rd sheet-

(1) Was there failure on the part of the first Defendant in delivering

5 The Suit came on for final hearing on 14-10-1925 and then by adjournments on 16-3-1929.

6. The list of witnesses examined and the list of documents admitted in evidence are separately filed.-

Judgment

Plaint

The Forest Department in Shimoga District had collected 596 pieces of timber measuring 4267 cubic feet of teak wood, and in a public auction which they held at Chikka Maras-a village in Kumsi Sub Taluq on 9-6-1921

12

TWO ANNAS
GOVT OF MYSORE
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6ᵗ the Forest Departmentᵗ (ie the 1ˢᵗ Deftˢ)
and that the latter had no rightᵗ
whatsoever 6ᵗ dispose of the same
in a public auction and obtained a
temporary injunction restraining the
2ⁿᵈ Defendantᵗ from removing the
same

5th wrt

As 2ⁿᵈ Defendantᵗ was in need
of money, he sold away his right-
title and interestᵗ in the said timber
6ᵗ the Plaintiff on 22-7-1922 atᵗ the
rate of ~~R~~ R as. p 0-4-6 per cubic footᵗ,
and petitioned the Forestᵗ Departmentᵗ
6ᵗ give delivery 6ᵗ him In spite
of Several demands, the said
Departmentᵗ neither gave delivery of
timber nor refunded the purchase
money which the 2ⁿᵈ Defendantᵗ

had

TWO ANNAS ಎರಡು ಆಣ್ಣೆ

GOVT OF MYSORE

Rs - As P.

(i) 1066 - 12 - 0 } the amount of deposit — made by the 2d defl —

(ii) 266 - 11 - 0/- } Damages on 4267 cub: ft — at the rate of 0-1-0 — per cub ft

(iii) 321 - 9 - 0/- } Interest by way of — damages from 22-8-1922 at the rate of 1 Re — p.c. p.m. up to date of suit on items (i) & (ii) above mentioned, which aggregates to Rs 1333-7-0/- and ~~cost~~

Total Rs 1655 - 0 - 0 /- , and Court costs.

2(A) Second Defendant filed a statement admitting Plaintiffs claim

2(B) First Defendant (the Mysore Government) filed the following written statement:-

The Sale of timber by the Forest Department and the deposit of money (Rs 1066 - 12 - 0/-) alleged in the plaint-

TWO ANNAS
GOVT OF MYSORE
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9th Sheet

2nd Defendant informed the Forest Department about the sale of the latter's right title, and interest in favour of the former in july 1922.

It was the duty of the 2d Defdt to have got the temporary injunction order referred to by him cancelled. As he failed to do so, the said timber was still lying on the spot, and the Department is not responsible for the same. The Department would, even now, do their best to help the Plaintiff and the 2nd Defendant in the removal of the timber although they are not strictly speaking, bound to do so. This, they undertake to do, & to encourage and ~~(illegible)~~ inspire confidence in those who would like

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the Forest Ranger at Ayanoor Range had some teak-wood pieces or logs belonging to the Government, deposited by the Forest Carrying Contractor Haladanna (who is not examined examined in the case) on a dry land belonging to Dw1 Mallappa of Chikkamarasa village, in Kunsi Sub Taluk. He advertised them for Sale and Exl- IV (17-5-1921) and Ex VI (25-5-1921) are the Sale proclamations. - He then sold them (ie 596 pieces or logs measuring 4267 cubic feet) on 9-6-1921 for Rupees 1066-12-0/- at the rate of 4 annas per cubic foot, and 2nd Defdt B. Syed Azeemuddin Moulvi became the purchaser as per Exhibit V (Sale list) Exl- VIII is the Bill of Sale given to him

11th Issue

TWO ANNAS ಎರಡು ಆಣ್ MYSORE

12th sworn

him. The said sale was confirmed by the District Forest officer on 28-6-21 as per Exhibit V (a) Shara The sale amount was paid by the 2d defendant in two instalments of Rs 266-12-0/- on 22-7-1921 and Rupees 800-0-0/- on 22-10-1921 (vide Exhibit VII receipt) The Ranger got 'Sold Stamps' affixed on all the logs or pieces on 1-11-1921 as per Exhibit VIII (a) Shara made on Exhibit VIII, which contains the following:- 'Sold stamped and allowed for removal'. The 2d defendant then affixed his own marks or ~~initials~~ initials 'B. S.A. (meaning: Bella Syed Azimuddin, which is his full name) on all those pieces in lot. The Ranger (DW 2) says that Ex VIII(a) dated

TWO ANNAS ಎರಡು ಆಣ್ಣೆ GOVT MYSORE

dated 1-11-1921 was the way-permit issued to the purchaser (Defendant number: 2) for removing the said timber that he had nothing more to do in the matter, and that 2d defendant was at per feel liberty to take away the said pieces after that date Second defendant, who was examined as PW 6, deposed.-

13/

'At the time of removing the timber, the Ranger has to issue a pass to us authorizing us to remove the timber. When the pass is given, the Ranger takes our Signature in the book and writes the same in his book. No such pass was issued to me, and my Signature was not taken to his book. The timber

8

was

TWO ANNAS
MYSORE
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was not delivered to me'

14th. This was what he stated in examination-in-chief. And in Re exammation he stated

Even without a pass, we can remove the timber of we have got the bill or receipt given by the Forest officer showing the measuremants and membens of the logs purchased by us. As soon as the sale is held this bill is issued to the purchaser whether the sale amount is or is not deposited.'

This shows that the 2d Defendant could, if he liked, have removed the timber Subsequent to 1-11-1921 as deposed to by the Ranger (DW2)

8th. as he had been given the bill of sale

Et-

TWO ANNAS ಎರಡು ಆಣೆ MYSORE

15th Issue

~~Sale~~ Exhibit VIII with the ~~away~~ permit Exh-VIII(a)

For reasons best known to himself

he (2nd Defendant) did not remove

the timber, and trouble ensued.

6 On 7-11-1921, one Haladamma

a resident of Kumsi - filed a Suit

(OS No. 180 of 1921-22 on the file of

the Munsiff of Shimoga) against the

present 2nd Defendant B. Syed Aze-

-muddin alleging,

that the timber in question had been

Sold by the Forest Department in public

auction to one B.S. Ameer Ahamed

on or about 14-8-1918.

that the said purchaser had

put his Seals containing the letters

B.S.A on the said pieces as a mark

of identification, 'B.S.A' meaning

B.S.

TWO ANNAS
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MYSORE

16th sheet

B. S. Ameer Ahamed,

that he then sold the same to the Plaintiff in that Case (viz Haladamma)

that Haladamma carted the timber from Forest and stacked it on Mallappa's land near Thirumarasa village,

that owing to some mis-understandings between him and the Forest Ranger and the Forester, the latter officers had fraudulently auctioned and sold the said timber to the 1st Defendant in that Case who is the 2d Defendant in the present Case,

and that he was about to remove the same and destroy the

said

TWO ANNAS
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GOVT OF MYSORE

Said Marks of identification,

and praying for a decree for a permanent injunction restraining the said defendant from removing the timber. A temporary injunction order was obtained soon after the filing of that Suit. — During the pendency of that Suit, ie on 20-7-22, the 1st defendant in that case (ie 2nd defendant in the present case) sold away his right, title, and interest in the said timber to the 2nd defendant in that case (ie the plaintiff in the present case — Habeeb Ahamed Moosa Sait Company, by its managing partner and Agent Alli Mahamed —). vide Exhibits I, A, and B.

17th. & cont

&

Both

TWO ANNAS ಎರಡು ಆಣೆ MYSORE

against the said Defendants,

and that his Suit should,

therefore, be dismissed with Costs

vide Exhibit II & Exhibit III).

The learned Munsiff held a

trial and decreed the suit as prayed

for in the plaint.

He found that Plaintiff —

Haladanna of that case was —

the ~~lawful~~ law-ful & owner of the timber

and not the defendants.

[Vide copy of judgment —

Exhibit F dated 13-9-1926.]

The defendants in that

case (who are the 2nd Defendant

and the Plaintiff in the present

case) do not seem to have preferred

any appeal against the said —

decision

TWO ANNAS ಎರಡು ಆಣೆ MYSORE

decision.

20th Sent-

One thing to be borne in mind in this connection is that as the Government was not a party to the above case, the decision passed therein is not binding on them and that it is therefore open to them in the present case to allege and prove that the said timber was Government property, that it was sold by them (ie the Forest Department) at public auction to the present 2d Defendant and that the Department had done all that was necessary on their part to enable the 2d Defendant to remove the same from the spot where it was lying (ie

Mallappas

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TWO ANNAS
GOVT OF MYSORE
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Mallappa's land). I have no doubt that all this has been clearly established by the evidence of the Forest Ranger (DW 2 Mr Abdul Huq) and of the 2nd defendant (PW 6 Syed Ayinuddin Moulvi and by the several Exhibits referred to in para 5 supra. —

7. The Ranger (DW 2) deposed — When I got sold-stamps — affixed on the timber pieces I gave delivery of the same. — Neither Haladanna nor Erappa objected then.

After the sold-stamps were affixed and the 2nd defendant was asked to remove timber, it remained in his possession although

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GOVT OF MYSORE

22 D. Swamy

although it was not actually removed by him from the spot. - - - - - - -

Way-permits are issued from regular depots at the time of removal of timber. If permission has been given on the bills for removal, no separate Way permit is necessary - - - - I have permitted removal of timber without Way-permits in cases of temporary depots of this kind (that is, the one in question in this case.

In the present case no Separate Way-permit was issued as permission for removal had been given in writing on the bill itself (vide Ext VIII (a)

Bhara

TWO ANNAS ಎರಡು ಆಣೆ GOVT MYSORE

Shana on the bill Exhibit VIII)

23-2-Dwd 8. The Ranger (DW2) has no doubt deposed in the previous case OS No 180 of 1920-1922 above mentioned that he did not give possession of these timber pieces to the defendant (C.B. Syed Azimuddin) as Haladamma and Eerappa obstructed him saying that there was an injunction order. His Canarese deposition in that case is to the following effect. —

ಈ ಕಾಂಡ ನಗ್ಗನ್ನ ಪ್ರತಿವಾದಿಯು ಕಾಡಿಗೆನ್ನ ಕೊಂಡಲ್ಲ. ಕಾಡಿಗೆನ್ನ ಕೊಂಡನಳ್ಳಿಕಾಂಗ ಹೊಡದಾನೆ ಪುರಸನದ ಕೊಂಡಿನ್ನ ವಾಚ್ಚಿ ವಾದಿಯುಂನೆಹಾ ಇಲ್ಲಿಂಪ್ಪಿಗೆ ಕೊಡಲಿಲ್ಲವೆಂದು ಕೊಂಡಮೇಲೆ ಹೇಳಿದರು

8. Reliance was also placed by the Plaintiff on Exhibits A1 25-7-22 and

TWO ANNAS
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GOVT OF MYSORE

and B1 Sharas made by Dw 2 (the Ranger) on the Petitions - Exhibit A 25-7-22 22-7-22 and Exhibit B filed by the present Plaintiff and by the present 2nd Defendant respectively intimating about the sale of the logs by the 2nd defendant to the plaintiff and requesting that delivery of the logs might be given to the latter or to his agents. The said Sharas Contain the following words. —

Issue orders to depot-guard Annappa to hand over the logs to Mr Abdul Rahim Kumsi or Mr Abdulla Sheriff of Shimoga after obtaining a receipt.

The words are underlined above in this para do not mean that

24th inst.

TWO ANNAS
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GOVT OF MYSORE

that no delivery had, in fact been
given to the purchaser (2nd defdt),
but they only mean that the
Forest department was willing
to help in the removal of the
logs although they were not
strictly bound to do so, and that
they could not give that help on
account of the promulgation of the
temporary injunction order of the
Munsiff for which they were not
responsible
~~respectible~~. Too liberal a meaning
cannot be attached to the said
underlined expressions in the
face of what is contained in
Exhibit VIII (a) I have no doubt
that the words 'possession or
delivery not given' and handover
have

25th inst

TWO ANNAS ಎರಡು ಆಣೆ MYSORE

26th cont-

have been used by the Ranger — rather loosely, and that they should not be interpreted literally. This — Explanation is not mine but the same is found in para 4 of the written Statement filed on behalf of the 1st Defendant (the Government)

9 For foregoing reasons, I hold on the first issue that there was no failure on the part of the first Defendant in delivering the timber to the 2d Defendant and

on the second Issue that the first Defendant is not — responsible for the temporary injunction issued by the Shimoga Munsiff at the instance of Haladanna

10 Plaintiff has not placed

on

TWO ANNAS
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MYSORE

on record (any) any account-
books of timber merchants of
Shimoga or its neighbourhood
to show that the market rates
after his purchase or subsequent
to 1-11-1921 were higher than the
rates he himself or his vendor
had paid. The oral evidence
adduced on the point is not
reliable [vide evidence of PW2
and PW5] I hold therefore on the
third Issue that no loss has been
proved to have been sustained
either by the Plaintiff or by the
2nd Defendant and that 1st Defend-
ant is not liable for the Same
even if there was any.

The result is that Plaintiff's
Suit-

27th Sept-

&

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28th inst

Suit Stands dismissed with costs of the first Defendant, and the 2nd Defendant shall bear his own costs, if any. Serial Number III (Application by the Plaintiff for amendment of the plaint) is rejected

Pronounced in open court.

Sd/ B. R. Krishnamachar

District judge

13 - 5 - 1929.

True Copy

P. Kader Khan

Head Record Keeper

District Court

Shimoga.

DISTRICT AND SESSIONS COURT SHIMOGA DIVISION

TWO ANNAS
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MYSORE

1st Court

In the Court of the District Judge
Shimoga
Original Suit Number 2 of 1924-25
Plaintiff :- Habib Ahamed Moosa Sait
by his attorney Alli Mohamad.
Defendants :- (1) The Government of
Mysore. (2) B. Syed Ajamadden
Mowli. —

List of witnesses examined in the
case. —

By the plaintiff

(1) Manjappa. (2) Mohamed Peer Sab.
(3) Abdulla Sheriff (4) Abdul Rahim.
(5) Syed Jaffar Sab. (6) Syed Ajamuddin
Mowli (2nd defendant) (7) Alli Mohamad

By the 1st Defendant.

(1) Mallappa. (2) Mr. Abdul Huch. —

Sd/ B. R. K

District Judge

TWO ANNAS

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MYSORE

List of documents admitted in —

evidence for the Plaintiff

2-2 suit —

Distinguishing letter or number	Description of documents	Date of admission	Remarks
	2	3	4
Exl- A.	Petition of Pff dated 22-7-1922 to the Range Forest officer Ayanoor	10-12-1928	
A (1)	Shara made on Exl-A by the Range officer on 25-7/22	31-1-1929.	
B	Petition of 2d Defendant dated 22-7-1922 to the Range Forest officer Ayanoor	10-12-1928	
B (1)	Shara made on Exl- B, by the Range Forest officer on 25-7-1922 —	31-1-1929	
C	Letter of Plaintiff to the District Forest officer Shimoga dated 6-4-1924.	10-12-1928	

2-

TWO ANNAS
MYSORE
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3-D sheet	D.	Copy of notice of Plffs Advocate dated 19-6-24 to the chief Secretary — Government of Mysore.	10-12-28
	Exl- E	Endorsement dated — 21-8-1924 from Government of Mysore to Plaintiffs' Advocate —	10-12-28
	Exl- F	Copy of judgment dated 13-9-1926 in OS 180 1921-22 on the file of the — Munsiff of Shimoga.	10-12-28
	Exhibit G	Receipt dated 6-1-1922	10-12-28
	Exl- H.	Serial application No IV filed on 25-6-1923 by Range Forest officer in OS 180 of 1921-22 on the — file of the Munsiff of Shimoga	31-1-29

TWO ANNAS
MYSORE
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5th Issue	Exl- III Written Statement of the 1st Defendant filed on 23-1-1922 in OS 180/21-22 on the file of the Munsiff of Shimoga.	10-12-28
	Exl- IV Sale proclamation of Forest Department filed in OS 180/1921-22 on the file of the Munsiff of Shimoga.	10-12-28
	Exl- V Sale list in the above case dated 1-6-1921 showing the sale of timber. —	10-12-28
	Exl- V(a) Endorsement on Exl- V dated 10-6-1921 — —	31-1-29.
	Exl- VI Proclamation of sale of timber issued from the Forest Department dated 25-5-1921	31-1-29.
	Exl- VII Receipt dated 22-10-1921 showing the receipt of —	

Rs

TWO ANNAS

MYSORE

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Rs 800/- from 2d Defendant 31-1-29.

18
6

Exl- VIII List showing the rate and description of timber sold dated 16-7-1921. 31-1-29

Exl- VIII (a) Shara dated 1-11-1921 made on the back of Exhibit- VIII. 31-1-29

Exl- IX Envelope dated 8-5-22 said to have contained the reply of the party to the notice issued by Ranger. 31-1-29.

Exl- X Report of the Forest Guard Annappa dated 8-8-1921 to the Range Forest officer Agumbe. 31-1-29

True copy Sd/ B. R. N.

District Judge

R. Hebbar Bhatta

Hd - R. Keeper

Appendix F G—1

SUBJECT.....

Diary No. of letter replied to.....

Section Revenue

File No. 72-29

Serial No. 6

No. 749

General and Revenue Secretariat

To .....

the 192

Date of issue 29/5/29

Signed by M'VS

(Here enter)

Letter No: 281 dated 18th May 1929

from Public Prosecutor, Shimoga,

To the Secy to Govt Law Dept,

Bangalore:

Re Cr. C. 2/14-29, District Court, Shimoga (Habib Ahmed Hamza Sait & Govt of Mysore & another.)

× × ×

× × ×

List of enclosures.....

Memo

Copied by.....

Copy of the above is forwarded with compliments to the Chief Conservator of Forests in Mysore for information.

Examined by.....

over

WD 0399—GPB—20,000—18-9-28

5896

No 370.
Encl.

SHIMOGA,

Dated 26th. May 1930.

From

N. SESHA SASTRI, ESQ., B.A., B.L.,
Public Prosecutor,
SHIMOGA DIVISION.

To

The Secretary to Government,
Law Department, Bangalore.

Sir,

I have the honor to state that I am asked by the District Forst Officer, Shimoga Division, to take steps in execution for the recovery of court costs due ~~frm~~ to Government from the plaintiff in OsS. 2/24-25, District Judge's Court, Shimoga. (Habib Ahmed Musa sait vs Government) I therefore request you to kindly send me for reference and return the copy of the decree in the above case sent to you with my letter No. 2 dated 2-7-1929.

I have the honor to be,
Sir,
Your most obedient servant,
N. S. Krishna murthi
for Public Prosecutor, Shimoga Division.

Rem.
29/5

Loss 72-27
(5-7)

Draft put up
Dsp
6/6

Issued
P 7176 / 12.6.30

Dsp
9/6

Dep
Dsp
20/6

Appendix F G—1

SUBJECT.....

.....

.....

Section

File No.

Serial No.

No. 7176 Genl

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

To

The Public Prosecutor

Shimoga,

Date of issue..... 12/6/30

Signed by..... M Ns

Sir,

As desired in your letter No. 370 dated 26th May 1930, I ~~am~~ send~~ing~~ herewith the copy of the decree passed in O.S. 2 of 24-25 (Habib Ahmed Musa Sait vs Govt) on the file of the D.C. Shimoga.

I have ek

List of enclosures.....

Copied by.....

Examined by.....

W d- R

DNP

6/6

over

The Public Prosecutor,
Shimoga Division.

As desired in your letter No.370 dated 26th May 1930, I send herewith the copy of the decree passed in O.S.2 of 24-25 (Habib Ahmed Musa Sait Vs. Government) on the file of the District Court. Shimoga.

I have the honour to be,
Sir,
Your most obedient servant,

For Secretary to Govt.
Law Department.